

vulnerabilities, consequences, and existing protective measures, procedures and operations.

*Vessel Security Plan (VSP)* means the plan developed to ensure the application of security measures designed to protect the vessel and the facility that the vessel is servicing or interacting with, the vessel's cargoes, and persons on board at the respective MARSEC Levels.

*Vessel Security Officer (VSO)* means the person onboard the vessel, accountable to the Master, designated by the Company as responsible for security of the vessel, including implementation and maintenance of the Vessel Security Plan, and for liaison with the Facility Security Officer and the vessel's Company Security Officer.

*Vessel stores* means—

(1) Materials that are on board a vessel for the upkeep, maintenance, safety, operation or navigation of the vessel; and

(2) Materials for the safety or comfort of the vessel's passengers or crew, including any provisions for the vessel's passengers or crew.

*Vessel-to-vessel activity* means any activity not related to a facility or port that involves the transfer of cargo, vessel stores, or persons from one vessel to another.

*Waters subject to the jurisdiction of the U.S.*, for purposes of this subchapter, includes all waters described in section 2.36(a) of this chapter; the Exclusive Economic Zone, in respect to the living and non-living resources therein; and, in respect to facilities located on the Outer Continental Shelf of the U.S., the waters superjacent thereto.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60470, Oct. 22, 2003; USCG-2004-18057, 69 FR 34925, June 23, 2004]

#### § 101.110 Applicability.

Unless otherwise specified, this subchapter applies to vessels, structures, and facilities of any kind, located under, in, on, or adjacent to waters subject to the jurisdiction of the U.S.

#### § 101.115 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and

1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is on file at the Office of the Coast Guard Port Security Directorate (G-MP), Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). All material is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subchapter are as follows:

#### INTERNATIONAL MARITIME ORGANIZATION (IMO)

Publication Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

Conference resolution 1, Adoption of amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, and amendments to Chapter XI of SOLAS 1974, adopted December 12, 2002, (SOLAS Chapter XI-1 or SOLAS Chapter XI-2).

Conference resolution 2, Adoption of the International Code for the Security of Ships and of Port Facilities, parts A and B, adopted on December 12, 2002 (ISPS Code).

101.120; 101.310;  
101.410; 101.505;  
104.105; 104.115;  
104.120; 104.297;  
104.400.

101.410; 101.505;  
104.105; 104.115;  
104.120; 104.297;  
104.400.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 69 FR 18803, Apr. 9, 2004]

#### § 101.120 Alternatives.

(a) *Alternative Security Agreements.* (1) The U.S. may conclude in writing, as provided in SOLAS Chapter XI-2, Regulation 11 (Incorporated by reference, see § 101.115), a bilateral or multilateral agreements with other Contracting Governments to SOLAS on Alternative Security Arrangements covering short international voyages on fixed routes between facilities subject to the jurisdiction of the U.S. and facilities in the territories of those Contracting Governments.

(2) As further provided in SOLAS Chapter XI-2, Regulation 11, a vessel covered by such an agreement shall not conduct any vessel-to-vessel activity with any vessel not covered by the agreement.

(b) *Alternative Security Programs.* (1) Owners and operators of vessels and facilities required to have security plans under part 104, 105, or 106 of this subchapter, other than vessels that are subject to SOLAS Chapter XI, may meet an Alternative Security Program that has been reviewed and approved by the Commandant (G-MP) as meeting the requirements of part 104, 105, or 106, as applicable.

(2) Owners or operators must implement an approved Alternative Security Program in its entirety to be deemed in compliance with either part 104, 105, or 106.

(3) Owners or operators who have implemented an Alternative Security Program must send a letter to the appropriate plan approval authority under part 104, 105, or 106 of this subchapter identifying which Alternative Security Program they have implemented, identifying those vessels or facilities that will implement the Alternative Security Program, and attesting that they are in full compliance therewith. A copy of this letter shall be retained on board the vessel or kept at the facility to which it pertains along with a copy of the Alternative Security Program and a vessel, facility, or Outer Continental Shelf facility specific security assessment report generated under the Alternative Security Program.

(4) Owners or operators shall make available to the Coast Guard, upon request, any information related to implementation of an approved Alternative Security Program.

(c) *Approval of Alternative Security Programs.* You must submit to the Commandant (G-MP) for review and approval the Alternative Security Program and the following information to assess the adequacy of the proposed Alternative Security Program:

(1) A list of the vessel and facility type that the Alternative Security Program is intended to apply;

(2) A security assessment for the vessel or facility type;

(3) Explanation of how the Alternative Security Program addresses the requirements of parts 104, 105, or 106, as applicable; and

(4) Explanation of how owners and operators must implement the Alternative Security Program in its entirety, including performing an operational and vessel or facility specific assessment and verification of implementation.

(d) *Amendment of Approved Alternative Security Programs.* (1) Amendments to an Alternative Security Program approved under this section may be initiated by—

(i) The submitter of an Alternative Security Program under paragraph (c) of this section; or

(ii) The Coast Guard upon a determination that an amendment is needed to maintain the security of a vessel or facility. The Coast Guard will give the submitter of an Alternative Security Program written notice and request that the submitter propose amendments addressing any matters specified in the notice. The submitter will have at least 60 days to submit its proposed amendments.

(2) Proposed amendments must be sent to the Commandant (G-MP). If initiated by the submitter, the proposed amendment must be submitted at least 30 days before the amendment is to take effect unless the Commandant (G-MP) allows a shorter period. The Commandant (G-MP) will approve or disapprove the proposed amendment in accordance with paragraph (f) of this section.

(e) *Validity of Alternative Security Program.* An Alternative Security Program approved under this section is valid for 5 years from the date of its approval.

(f) The Commandant (G-MP) will examine each submission for compliance with this part, and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60471, Oct. 22, 2003]

#### **§ 101.125 Approved Alternative Security Programs.**

The following have been approved, by the Commandant (G-MP), as Alternative Security Programs, which may be used by vessel or facility owners or operators to meet the provisions of parts 104, 105, or 106 of this subchapter, as applicable:

(a) American Gaming Association Alternative Security Program, dated September 11, 2003.

(b) American Waterways Operators Alternative Security Program for Tugboats, and Towboats and Barges, dated September 24, 2003.

(c) Passenger Vessel Association Industry Standards for Security of Passenger Vessels and Small Passenger Vessels, dated September 17, 2003.

[USCG-2003-14792, 68 FR 60472, Oct. 22, 2003]

#### **§ 101.130 Equivalent security measures.**

(a) For any measure required by part 104, 105, or 106 of this subchapter, the owner or operator may substitute an equivalent security measure that has been approved by the Commandant (G-MP) as meeting or exceeding the effectiveness of the required measure. The Commandant (G-MP) may require that the owner or operator provide data for use in assessing the effectiveness of the proposed equivalent security measure.

(b) Requests for approval of equivalent security measures should be made to the appropriate plan approval authority under parts 104, 105 or 106 of this subchapter.

### **Subpart B—Maritime Security (MARSEC) Levels**

#### **§ 101.200 MARSEC Levels.**

(a) MARSEC Levels advise the maritime community and the public of the level of risk to the maritime elements of the national transportation system. Ports, under direction of the local COTP, will respond to changes in the MARSEC Level by implementing the

measures specified in the AMS Plan. Similarly, vessels and facilities required to have security plans under part 104, 105, or 106 of this subchapter shall implement the measures specified in their security plans for the applicable MARSEC Level.

(b) Unless otherwise directed, each port, vessel, and facility shall operate at MARSEC Level 1.

(c) The Commandant will set the MARSEC Level consistent with the equivalent Homeland Security Advisory System (HSAS) Threat Condition and that Threat Condition's scope of application. Notwithstanding the HSAS, the Commandant retains discretion to adjust the MARSEC Level when necessary to address any particular security concerns or circumstances related to the maritime elements of the national transportation system.

(d) The COTP may temporarily raise the MARSEC Level for the port, a specific marine operation within the port, or a specific industry within the port, when necessary to address an exigent circumstance immediately affecting the security of the maritime elements of the transportation system in his/her area of responsibility.

#### **§ 101.205 Department of Homeland Security alignment.**

The MARSEC Levels are aligned with the Department of Homeland Security's Homeland Security Advisory System (HSAS), established by Homeland Security Presidential Directive 3. Table 101.205, titled "Relation between HSAS and MARSEC Levels" in this section, shows this alignment.

TABLE 101.205.—RELATION BETWEEN HSAS AND MARSEC LEVELS

Homeland security advisory system (HSAS) threat condition	Equivalent maritime security (MARSEC) level
Low: Green .....	MARSEC Level 1.
Guarded: Blue .....	
Elevated: Yellow.	
High: Orange .....	MARSEC Level 2.
Severe: Red .....	MARSEC Level 3.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003]